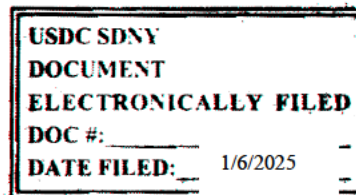


**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



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**RAMON MARIA AQUINO,**

**Plaintiff,**

**21-CV-10125 (SN)**

**-against-**

**OPINION & ORDER**

**COMMISSIONER OF SOCIAL SECURITY,**

**Defendant.**

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**SARAH NETBURN, United States Magistrate Judge:**

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g), seeking review of a denial of social security benefits. The Court remanded the matter for further review by the Commissioner of Social Security, and the Court approved a stipulation and agreement awarding Plaintiff \$5,400.00 in attorney’s fees under the Equal Access to Justice Act (the “EAJA”), 28 U.S.C. § 2412. ECF Nos. 25, 32.

Following the remand, Plaintiff received retroactive benefits from the Social Security Administration. Thereafter, on December 19, 2024, Plaintiff’s counsel filed a motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). See ECF Nos. 33, 34. Section 406(b) permits the Court to approve “a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits” awarded to the plaintiff. Gisbrecht v. Barnhart, 535 U.S. 789, 795 (2002) (quoting 42 U.S.C. § 406(b)(1)(A)). Because of the Commissioner’s unique role and expertise in this area, the Court ordered the Commissioner to respond to Plaintiff’s motion. In particular, the Court directed the Commissioner to address the question of whether the fees amount to an

impermissible windfall. See Diberardino v. Commissioner of Social Security, No. 17-cv-02868 (PKC), 2020 WL 6746828 (E.D.N.Y. Nov. 17, 2020).

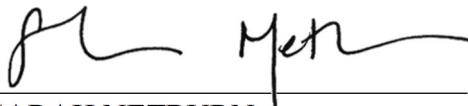
On January 3, 2025, the Commissioner filed a letter indicating that the hourly rate of \$1,837.58 was higher than what this District has typically awarded attorneys. ECF No. 37. The Commissioner argues that the typical range for hourly attorney's fees should not exceed approximately \$1,500. While high, a de facto hourly rate of \$1,837 is not unprecedented or categorically unreasonable. See Mannouris v. Comm'r of Soc. Sec., No. 20-cv-9790 (AT)(BCM), 2023 WL 9118792, at \*3 (S.D.N.Y. Dec. 22, 2023), report and recommendation adopted, 2024 WL 81851 (S.D.N.Y. Jan. 8, 2024) (de facto hourly rate of **\$1,918** approved where counsel did not file any motions or briefs before the matter was remanded to the Commissioner); see also Hennelly v. Kijakazi, No. 20-cv-4786 (JGK), 2023 WL 3816961, at \*2 (S.D.N.Y. June 5, 2023) (describing a non-contingency rate of **\$1,705.16** as "high, [but] not unprecedented"); Gentile v. Kijakazi, No. 21-cv-641 (AMD), 2023 WL 6392905, at \*3 (E.D.N.Y. May 3, 2023) (approving de facto hourly rate of **\$1,750** for experienced counsel); King v. Kijakazi, No. 20-cv-1139 (SM), 2023 WL 1782032 (D.N.H. Feb. 6, 2023) (approving award of \$12,000 at a de facto rate of **\$2,927** per hour, where counsel recorded 4.1 hours following remand to the commissioner "[a]most immediately" after counsel filed a "two-page, form complaint"). Plaintiff's counsel billed 20.7 hours. This included briefing and oral arguments before this Court on cross-motions for judgment on the pleadings. Plaintiff's motion was granted, and the case was remanded to the Commissioner. ECF No. 24.

Accordingly, having reviewed both the Plaintiff's motion and Commissioner's response, along with all supporting documents, the Court determines that the requested award is "reasonable" and ORDERS that attorney's fees be granted in the amount of \$38,687.93. This

amount represents less than 25% of the past due benefits awarded to the Plaintiff after the hearing level representative fee is reduced. Upon receipt of this sum, counsel for the Plaintiff is directed to refund directly to the Plaintiff the previously awarded EAJA fees of \$5,400.00.

The Clerk of Court is requested to GRANT the motion at ECF No. 33.

**SO ORDERED.**

  
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SARAH NETBURN  
United States Magistrate Judge

DATED: New York, New York  
January 6, 2025